

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

PM 11-21-11

DENNIS MATHESON,
Appellant / Plaintiff

v.

CITY OF HOQUIAM and ITS
AGENTS or ASSIGNS

Eric Dickman
WSBA # 14317
November 17, 2011
City of Hoquiam

And

The STATE OF WASHINGTON and
the WASHINGTON STATE DEPARTMENT
OF NATURAL RESOURCES

Appellees / Defendants

APPELLANT'S REPLY BRIEF

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Table of Contents

Table of Cases.....	iii
Washington Cases.....	iii
Federal Cases.....	iii
Constitutional Provisions.....	v
Statutes.....	v
Regulations and Rules.....	v
Other Authority.....	vi
Introduction.....	1
1. Respondents Incorrectly Claim There Was No Federal Admiralty Jurisdiction Because the NORTHERN RETRIEVER Was a Dead Ship.....	3
2. The Respondents Exercised, What Is For All Purposes, <u>In Rem</u> Jurisdiction Over The NORTHERN RETRIEVER. This Was Beyond The State's Jurisdictional Limits.....	10
3. Miscellaneous Arguments.....	16
Conclusion.....	18
Proof of Service.....	20

TABLE OF AUTHORITIES

Table of Cases (Wash. First –R 10.4(g))

Washington Cases	Page(s)
<i>Harbor Enterprises, Inc. v. Gudjonsson</i> , 116 Wn.2d 283, 803 P.2d 798 (Wash. 1991).....	18
<i>Pasternack v. Lubetich</i> , 11 Wn.App. 265, 522 P.2d 867, 1974 AMC 1464 (1974).....	15
Federal Cases	
<i>American Export lines v. Norfolk Shipbuilding & Drydock Corp.</i> , 336 F.2d 525,1965 AMC 166..... (4th Cir. 1964)	8
<i>Amoco Oil v. M/V Montclair</i> , 766 F.2d 473, 1986 AMC 1420 (11th Cir. 1985).....	8
<i>Askew v. Am. Waterways Operators, Inc.</i> , 411 U.S. 325, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1973).....	10, 11, 12
<i>Budinich v. Becton Dickenson & Co.</i> , 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988).....	1
<i>Cargill, Inc. v. C&P Towing Co., Inc.</i> , 1991 AMC 101 (D.C. E.D. VA 1991).....	8
<i>Cohen v. Empire Blue Cross & Blue Shield</i> , 176 F.3d 35 (2nd Cir. 1999).....	1
<i>David v. Chas. Kurz & Co., Inc.</i> , 483 F.2d 184, 186 (9th Cir. 1983).....	8
<i>Dean v. United States</i> , 418 F.2d 1236 1970 AMC 796 (9th Cir. 1963).....	8
<i>Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.</i> , 271 U.S. 19, 1926 AMC 684 (1925).....	3
<i>Fairmount Shipping Corp. v. Chevron Int'l Oil Co., Inc.</i> , 511 F.2d 1252, 1975 AMC 261 (2nd Cir. 1975).....	8
<i>Goodman v. 1973 26 Foot Trojan Vessel</i> , 859 F.2d 71 (8th Cir. 1988).....	7, 9

<i>Hagen v. City of Richland</i> , 52 S.E. 385 (Va. 1905).....	12
<i>Hercules Co. v. Brigadier General Absolom Baird</i> , 214 F.2d 66 (3d Cir. 1954).....	8
<i>Hoagland v. Sandberg, Phoenix & Von Gantard, P.C.</i> , 385 F.3d 737 (7th Cir. 2004).....	1
<i>In re Kilgus</i> , 811 F.2d 1112 (7th Cir. 1987).....	1
<i>Johnson v. Oil Transport Co., Inc.</i> , 440 F.2d 109, 1971 AMC 1038 (5th Cir. 1971).....	7
<i>Kelly v. Washington</i> , 302 U.S. 1, 58 S. Ct. 87, 82 L.Ed. 3 (1937).....	11
<i>Kickerbocker Ice, Co. v. Stewart</i> , 253 U.S. 149, 30 S.Ct. 438, 64 L.Ed 834 (1920).....	17
<i>Long v. Sasser</i> , 91 F.3d 645 (4th Cir. 1996).....	1
<i>Marifax v. McCrory</i> , 391 F.2d 909, 1968 AMC 965, 3 ALR Fed 878 (4th Cir. 1968).....	9
<i>Noel v. Isbrandtsen Co., Inc.</i> , 278 F.2d 783, 1961 AMC 611 (4th Cir. 1961).....	7
<i>Piedmont & George's Creek Coal Co. v. Seaboard Fisheries, Co.</i> , 254 U.S. 1, 41 S.Ct. 1, 65 L.Ed. 97, 2001 AMC 2692 (1920).....	2
<i>Pavone v. Mississippi Riverboat Amusement Corp.</i> , 52 F.3d 560, 1995 AMC 2038 (5 Cir. 1995).....	4
<i>PNC Bank of Delaware v. F/V Miss Laura</i> , 243 F.Supp.2d 175, 2003 AMC 1022 (U.S.D.C. NJ 2003).....	13
<i>Roper v. United States</i> , 368 U.S. 20 (1961).....	7
<i>Stewart v. Dutra Construction Company</i> , 543 U.S. 481, 125 S.Ct. 1118, 160 L.Ed.2d 932, 2005 AMC 609 (2005).....	3, 4, 5, 6, 7
<i>Tagliere v. Harrah's Illinois Corp.</i> , 445 F.3d 1012, 2006 AMC 1290 (7th Cir. 2006).....	1, 5, 6, 7, 8, 9
<i>Walsh v. Tadlock</i> , 104 F.2d 131, 132 (9th Cir. 1939).....	13

<i>West v. United States</i> , 361 U.S. 118, 1960 AMC 15 (195 Water Quality Improvement Act of 1970).....	8
--	---

Constitutional Provisions

None

Statutes (in order in which they appear)

1 U.S.C. § 3.....	3
RCW 79.100.005 et seq.....	13
33 USC §§ 409-4215.....	13
RCW 79.100.....	14, 18

Regulations and Rules

Derelict Vessel Act.....	13, 17
Supplemental Rules For Admiralty or Maritime Claims and Asset Forfeiture Actions, Rule C.....	2
Water Quality Improvement Act of 1970.....	10
Wreck Act.....	13, 14

Other Authority

Schoenbaum, <u>Admiralty and Maritime Law</u> , Third Edition § 9-1 (2001).....	13
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Introduction

Respondents raise the question of admiralty jurisdiction. They make arguments that under other circumstances might make sense.

But the most important requirement of a jurisdictional rule is not that it appeal to common sense but that it be clear. *Budinich v. Becton Dickenson & Co.*, 486 U.S. 196, 202, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988); *Hoagland v. Sandberg, Phoenix & Von Gantard, P.C.*, 385 F.3d 737, 739-40, (7th Cir. 2004); *In re Kilgus*, 811 F.2d 1112, 1117 (7th Cir. 1987); *Cohen v. Empire Blue Cross & Blue Shield*, 176 F.3d 35, 42 (2nd Cir. 1999); *Long v. Sasser*, 91 F.3d 645, 647 (4th Cir. 1996). It is very unfortunate when parties are not sure which court they should litigating their dispute in, as the case at hand illustrates.

Tagliere v. Harrah's Illinois Corp., 445 F.3d 1012, 1013, 2006 AMC 1290 (7th Cir. 2006)(pointing out differences between maritime and common law in personal injury actions).

Respondents also repeatedly try to downplay the importance of the uniformity of maritime law. They would have the Court believe that what happens in the small city of Hoquiam, Washington, does not matter to worldwide trade. But nothing could be further from the truth. The uniformity of maritime law, especially maritime lien law, is the engine that allows worldwide commerce.

The purpose of the maritime lien arose from the fact the providers of goods and services necessary for the continuance

of voyages of vessels trading away from their homeports were understandably reluctant to provide credit to vessel operators about whom they knew nothing. Commercial necessity required that masters could pledge their vessels as security for the debts of the vessel necessary for the vessel's continued operation. The purpose of recognizing maritime liens is to encourage the provision of necessities and supplies to ships whose operators are unable to make contemporaneous payment. *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries, Co.*, 254 U.S. 1, 41 S.Ct. 1, 65 L.Ed. 97, 2001 AMC 2692 (1920). Where, as here the respondents wipe out maritime liens and fail to use the Supplemental Rules For Admiralty or Maritime Claims and Asset Forfeiture Actions, Rule C, or a procedure so like that as to be indistinguishable they create a new process to wipe away maritime liens; they change the fabric of maritime law. They abandon over 200 years of United States law and maybe thousands of years of International Law, for expediency. That is unacceptable, and beyond the jurisdiction of the State Superior Courts.

Therefore, Mr. Matheson respectfully requests that the Orders found at CP 6-10, 11-18, 20-24, 224-26, 279-80, and 281-

82, be reversed and this matter be remanded for additional proceedings

1. Respondents Incorrectly Claim There Was No Federal Admiralty Jurisdiction Because the NORTHERN RETRIEVER Was a Dead Ship.

To understand what is a “dead ship,” and why the NORTHERN RETRIEVER was not a dead ship, we must first look at what is a vessel in navigation, as admiralty jurisdiction applies to a vessel in navigation.

The United States Supreme Court's recently addressed this in *Stewart v. Dutra Construction Company*, 543 U.S. 481, 125 S.Ct. 1118, 160 L.Ed.2d 932, 2005 AMC 609 (2005). The Court concluded that the term "vessel" "includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." *Stewart v. Dutra Construction Co.*, 543 U.S. at 489, 2005 AMC at 614 (quoting 1 U.S.C. § 3). And, more specifically, "a watercraft is not 'capable of being used' for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement." *Id.*, 543 U.S. at 494, 2005 AMC at 617 (citing *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19, 1926 AMC

684 (1925)(finding that a wharfboat that was attached to the mainland by water, electricity, and telephone cables and was neither taken from place to place nor used to carry freight from one place to another was not a vessel in navigation)(emphasis added)).

However, the *Stewart* Court cautioned that a ship's status as a vessel, or as a non-vessel, is not something that changes frequently:

A ship and her crew do not move in and out of Jones Act coverage depending on whether the ship is at anchor, docked for loading or unloading, or berthed for minor repairs, in the same way that ships taken permanently out of the water as a practical matter do not remain vessels merely because of the remote possibility that they may one day sail again. See *Pavone v. Mississippi Riverboat Amusement Corp.*, 52 F.3d 560, 570, 1995 AMC 2038, 2047 (5 Cir. 1995)(floating casino was no longer a vessel where it "was moored to the shore in a semi-permanent or indefinite manner"). . .

Stewart, 543 U.S. at 494, 2005 AMC at 617-18.

Turning back to the vessel in question, the *Stewart* Court said that the relevant statute "requires only that a watercraft be 'used or capable of being used, as a means of transportation on water' to qualify as a vessel. It does not require that a watercraft be used primarily for that purpose." *Id.*

[In sum,] the "in navigation" requirement is an element of the vessel status of a watercraft. It is relevant to whether the craft is "used, or capable of being used" for maritime transportation. A ship long lodged in a drydock or

shipyard can again be put to sea, no less than one permanently moored to shore or the ocean floor can be cut loose and made to sail. The question remains in all cases whether the watercraft's use "as a means of transportation on water" is a practical possibility or merely a theoretical one. . . . [T]he SUPER SCOOP had not been taken out of service, permanently anchored, or otherwise rendered practically incapable of maritime transport.

Stewart, 543 U.S. at 496, 2005 AMC at 619. Therefore, the U.S. Supreme Court concluded that the dredge was a "vessel in navigation" pursuant to the relevant statutory definition. *Stewart*, 543 U.S. at 497, 2005 AMC at 620.

All of the cases cited by the Respondents are pre-*Stewart v. Dutra Construction Co.*, (2005).¹ Those cases all read what makes a vessel in navigation for admiralty jurisdiction much narrower than post *Stewart* cases have.

In a post *Stewart* case, *Tagliere v. Harrah's Illinois Corporation*, 445 F.3d 1012, 2006 AMC 1290 (7 Cir. 2006) which considered whether admiralty jurisdiction had been properly asserted over a lawsuit brought by a patron against a riverboat casino operator. In considering whether the riverboat casino

¹ The cases cited by the respondents are also distinguishable because they deal with ships that have been mothballed, casino vessels that have been permanently moored with shore power, phone, water and the like, with no intention of ever moving the vessel. The NORTHERN RETRIEVER was always being used and even while in disrepair it was intended she would return to full use.

was a "vessel" for the purpose of admiralty jurisdiction, the

Tagliere court applied the *Stewart* rationale:

The vessel was on navigable waters, moreover, and while the Supreme Court has now held that a boat that "has been permanently moored or otherwise rendered practically incapable of transportation or movement" is not a "vessel" for purposes of admiralty jurisdiction, *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 494, 2005 AMC 609, 617 (2005), there has been no showing that the boat in our case, though stationary for the past two years, is permanently moored in the Court's sense (disabled from sailing) and is thus the equivalent of landfill.

Tagliere v. Harrah's Illinois Corporation, 445 F.3d at 1013-14, 2006 AMC at 1292 (holding that a vessel that had not moved in years was still a vessel in navigation and not a dead ship.)

Mr. Matheson's vessel, the NORTHERN RETRIEVER, was far from the equivalent of landfill. The vessel floated with the tides. It was Mr. Matheson's home and place of business. She could move.² She was in fact towed by the respondents to be destroyed. She had never sunk. She was a vessel in navigation under admiralty jurisdiction.

The *Tagliere* court looked to the intention of the owner as one possible way to determine if a vessel was permanently

² In *Stewart*, supra., the vessel in question a barge had no engine and was towed from place to place, much like the NORTHERN RETRIEVER.

moored (out of navigation) or just indefinitely moored, that is waiting to be sailed again.

We conclude that the district court erred in dismissing the suit, though it is open to the defendant to show on remand, if it can, that its boat was permanently rather than merely indefinitely moored when the accident occurred and was therefore no longer a "vessel" for purposes of admiralty jurisdiction. The difference between "permanently" and "indefinitely" in this context is vague and has not been explored by the parties. The *Stewart* case suggests that the boat must be permanently incapacitated from sailing. Yet maybe--by analogy to the difference between domicile and residence--a boat also is "permanently" moored when her owner intends that the boat will never again sail, while if he has not yet decided her ultimate destiny she is only "indefinitely" moored.

Tagliere, 445 F.3d at 1016, 2006 AMC at 1295.

There can be no doubt that Mr. Matheson's intention was to continue the use the NORTHERN RETRIEVER as his home, office, and base for salvage, for some time to come.

Since the NORTHERN RETRIEVER was a vessel in navigation, was it a dead ship? No.

Under the dead ship doctrine, a well established principal in admiralty a "dead ship" is "incapable of navigation and unable to serve any of the purposes of a vessel in navigation." *Johnson v. Oil Transport Co., Inc.*, 440 F.2d 109, 112, 1971 AMC 1038, 1041 (5th Cir. 1971); *Goodman v. 1973 26 Foot Trojan Vessel*, 859 F.2d 71, 73 (8th Cir. 1988)(defining "dead ship" as one that loses its status as a vessel when its function is so changed that it has no further navigation function"); see *Noel v. Isbrandtsen Co., Inc.*, 278 F.2d 783, 785, 1961 AMC 611, 613 (4th Cir. 1961). In the case of a barge, a barge that is "actually used and transporting cargo" is not a "dead ship." *Roper v. United States*, 368 U.S. 20, 24 (1961)(Douglas, J., dissenting).

Particular rules apply to “dead ships.” For example, a “dead ship” owes no warranty – express or implied of seaworthiness to a person. See e.g. *West v. United States*, 361 U.S. 118, 122, 1960 AMC 15, 18 (1959); *Fairmount Shipping Corp. v. Chevron Int'l Oil Co., Inc.*, 511 F.2d 1252, 1258, 1975 AMC 261, 268 (2nd Cir. 1975); *David v. Chas. Kurz & Co., Inc.*, 483 F.2d 184, 186 (9th Cir. 1983); *Dean v. United States*, 418 F.2d 1236, 1238, 1970 AMC 796, 798 (9th Cir. 1963); *American Export lines v. Norfolk Shipbuilding & Drydock Corp.*, 336 F.2d 525, 527, 1965 AMC 166, 169-71 (4th Cir. 1964); *Noel*, 287 F.2d at 785, 1961 AMC at 785. Another consequence of possessing a “dead ship” status is that a “dead ship” is not liable in admiralty suits in rem. *Amoco Oil v. M/V Montclair*, 766 F.2d 473, 475, 1986 AMC 1420, 1421-22 (11th Cir. 1985).

Cargill, Inc. v. C&P Towing Co., Inc., 1991 AMC 101, 111 (D.C. E.D. VA 1991).

As seen being a dead ship has significant legal consequences and should not lightly be applied to a vessel. If the vessel is more than the equivalent of a landfill, it should not be considered a dead ship.³ *Tagliere*, 445 F.3d at 1013-14, 2006 AMC at 1292.

Merely because a boat's registration has expired, however, or because a boat is in need of repair does not mean that it has no further navigation function. See *Hercules Co. v. Brigadier General Absalom Baird*, 214 F.2d 66, 69 (3d Cir. 1954).

³ The exception are casino boats and a few fishing barges that are permanently affixed to the dock with shore power, water, telephone and steel cables, where the owner does not intend for the vessels to ever sail again.

Goodman v. 1973 26 Foot Trojan Vessel, 859 F.2d 71, 73 (8th Cir. 1988).

“Even fifteen years of resting inertia does not necessarily destroy navigability.” *Marifax v. McCrory*, 391 F.2d 909, 910, 1968 AMC 965, 3 ALR Fed 878 (4th Cir. 1968)(vessels in the Navy mothball fleet for 15 years are merely “inactive” and not removed from navigation as in being a dead ship).

The NORTHERN RETRIEVER was not in the best of repair. Nevertheless, she was not so far out of repair that she had no further navigational function. She was Mr. Matheson’s home, office and place he did salvage from her. Respondents themselves admit the vessel was afloat, and that it was towed without much effort. The vessel was far from the equivalent of landfill. See *Tagliere v. Harrah's Illinois Corporation*, 445 F.3d at 1013-14, 2006 AMC at 1292.

The NORTHERN RETRIEVER was not in mothballs. She had not sunk, and while she might have been indefinitely moored she was not permanently moored. Mr. Matheson fully intended to continue to use the vessel. Since the NORTHERN RETRIEVER was not a dead ship, federal maritime law applied to her. She was a vessel in navigation.

2. The Respondents Exercised, What Is For All Purposes, In Rem Jurisdiction Over The NORTHERN RETRIEVER. This Was Beyond The State's Jurisdictional Limits.

Respondents argue the Department of Natural Resources (DNR) has the police power to abate a public nuisance. While not admitting the NORTHERN RETRIEVER was a public nuisance, Mr. Matheson concedes that point. However, the devil is in the details, they say, and it is in the details that the respondents exceed the state's jurisdictional limits.

To make its point about police power the respondents rely upon *Askew v. Am. Waterways Operators, Inc.*, 411 U.S. 325, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1973). That case is informative. First, the Water Quality Improvement Act of 1970, federal act, the expressly provides for state action:

It is clear at the outset that the Federal Act does not preclude, but in fact allows, state regulation. Section 1161(o) provides that:

"(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.

"(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with

respect to the discharge of oil into any waters within such State.

"(3) Nothing in this section shall be construed . . . to affect any State or local law not in conflict with this section." (Emphasis [in original deleted].)

Askew v. Am. Waterways Operators, Inc., 411 U.S. at 329, 93

S.Ct. at 1594, 36 L.Ed.2d at 284.

General maritime law, however, does not provide for state action. In fact, just the opposite is true. The hallmark of general maritime law is that it is uniform, without the several states changing it.

Second, even where State action is allowed the State could go too far, and overstep its jurisdictional limits:

Even though Congress has acted in the admiralty area, state regulation is permissible, absent a clear conflict with the federal law. Thus in *Kelly v. Washington*, 302 U.S. 1, [58 S.Ct. 87, 82 L.Ed. 3 (1937)] it appeared that, while Congress had provided a comprehensive system of inspection of vessels on navigable waters, *id.*, at 4, the State of Washington also had a comprehensive code of inspection. Some of those state standards conflicted with the federal requirements, *id.*, at 14-15; but those provisions of the Washington law relating to safety and seaworthiness were not in conflict with the federal law. So the question was whether the absence of congressional action and the need for uniformity of regulation barred state action. Mr. Chief Justice Hughes, writing for the Court, ruled in the negative, saying:

"A vessel which is actually unsafe and unseaworthy in the primary and commonly understood sense is not within the protection of that principle. The State may treat it as it may treat a diseased animal or unwholesome food. In such a matter, the State may protect its people without waiting for

federal action providing the state action does not come into conflict with federal rules. If, however, the State goes farther and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a particular matter goes too far must be left to be determined when the precise question arises." *Id.*, at 15.

Askew, 411 U.S. at 341-42, 93 S.Ct. at 1600, 36 L.Ed.2d at 292.

So, even in the case cited by respondents there was a line over which the State could not act. The same principle applies to the NORTHERN RETRIEVER. The State could have done a lot to mitigate a public nuisance, if the NORTHERN RETRIEVER was such a nuisance, but it could not destroy the res, and terminate all maritime liens, without following either the federal admiralty procedures or one so similar as to be the same. To do otherwise destroyed the uniformity of maritime law in an unacceptable way.

The respondents also cite to *Hagen v. City of Richland*, 52 S.E. 385 (Va. 1905). This case, like the respondents' discussion of the Wreck Act, does not help respondents. In *Hagen* the barge the City blew up had sunk. When a vessel sinks and is lost or is destroyed, the maritime liens are stripped from the

vessel.⁴ *Walsh v. Tadlock*, 104 F.2d 131, 132 (9th Cir. 1939)(“With the total destruction of the vessel the lien thereon were of necessity extinguished”). Therefore, destruction of the vessel does not impact the uniformity of maritime law regarding maritime liens.

Next respondents try to compare the State’s Derelict Vessel Act (RCW 79.100.005 et seq.) to the federal “Wreck Act” (33 USC §§ 409-4215). This comparison does not help the respondents.

By its definition the federal Wreck Act deals with vessels that are sunk, lost. Whereas the State’s Derelict Act deals often with vessels that are still afloat and most likely have maritime liens attached to them. Therefore when the respondents say that the

⁴ “A maritime lien is a privileged claim upon maritime property . . . arising out of services rendered or injuries caused by that property.” Schoenbaum, Admiralty and Maritime Law, Third Edition § 9-1, p. 494 (2001). Once a maritime lien attaches to the property, it remains adhered to that property “until it is either executed through the in rem legal process . . . or is somehow extinguished by the operation of law.” *Id.* The general rule provides that the total destruction of a vessel will extinguish all maritime liens existing on that vessel. *Walsh*, 104 F.2d at 132. However, “if only part of the vessel is destroyed . . . then the lien will attach to the remaining part.” Schoenbaum, Admiralty and Maritime Law, Third Edition § 9-7 (2001).

PNC Bank of Delaware v. F/V Miss Laura, 243 F.Supp.2d 175, 2003 AMC 1022, 1025 (U.S.D.C. NJ 2003).

decision to remove or destroy a vessel under the Wreck Act does not require the jurisdiction of the federal court to foreclose the maritime liens (respondent's brief at p.20), that makes sense. First, the Wreck Act is a federal Act uniform throughout the several states. The State's Derlick Act applies only to the coastline of the State of Washington. Every state could have its own Derlick Act and each taking possession of vessel and destroying them in their own unique way. Loss of uniformity.

Second, under Washington State law the State simply declares the vessel abandoned and then acts. The vessel owner is not involved. Respondents say this is not an in rem action, but look at the procedure.

The state's action in using RCW 79.100 to destroy the NORTHERN RETRIEVER acted in every important respect as though it was foreclosing on an in rem lien. The state took control of the NORTHERN RETRIEVER and destroyed the vessel, thereby ending the res. Clearly, this was an action against the res. Foreclosing a maritime lien against the res is beyond the trial court's subject matter jurisdiction and for that reason the decisions of the court (CP pages 6-10, 11-18, 20-24, 224-26, 279-80, and 281-82) should be found to be void.

In *Pasternack v. Lubetich*, 11 Wn.App. 265, 522 P.2d 867, 1974 AMC 1464 (1974), the court said:

The foundation of jurisdiction In rem is the taking of the vessel into the custody of the court and the characteristic virtue of a proceeding in rem is that it operates directly upon the Res as the titular respondent in the suit and that the actual subject-matter of the jurisdiction and not, as at common law, immediately through the right, title or interest of a party brought before the court as defendant through personal service or the mere attachment of property as his with a view to subjecting his interest therein to the satisfaction of the judgment.

Pasternack, 11 Wn.App. at 267-68.

As the posting placed on the NORTHERN RETRIEVER that triggered the proceedings in the Superior Court said:

CITY OF HOQUIAM

NOTICE OF INTENT TO OBTAIN CUSTODY

VESSEL "NORTHERN RETRIEVER VIN ...

CITY OF HOQUIAM, acting as an authorized public entity with the authority granted in RCW 79.100, intends to take custody of the vessel *Northern Retriever, Vin ...*, on June 16, 2008. ... Once custody is obtained, CITY OF HOQUIAM is authorized to use or dispose of [the vessel] in any appropriate and environmentally sound manner without further notice to the owner.

CP page 61.

This is surely taking the vessel into custody and operating directly upon the res. The federal court's jurisdiction is "exclusive" as to those maritime causes of action where the thing

itself is treated as the offender and made defendant by name or description to enforce a right.

The fact the City of Hoquiam required Mr. Matheson to file suit to attempt to recover his vessel, instead of the City of Hoquiam going to court first to enforce its claimed right to take possession of the NORTHERN RETRIEVER and destroy the NORTHERN RETRIEVER does not change the fact the City's action is a procedure in rem. The notice posted on the NORTHERN RETRIEVER named the vessel. Mr. Matheson's name is not mentioned anywhere on the notice. No in personam claim is made against Mr. Matheson, but the notice makes clear the NORTHERN RETRIEVER will be "dispose[d] of [] in any appropriate and environmentally sound manner without further notice to the owner."

The court should not let a party use the form of the proceeding to supersede the substance of what is really happening. Regardless of how this case was pled it is really an in rem action. As such it was beyond the jurisdictional limits of the Superior Court.

3. Miscellaneous Arguments.

The respondents argue against preemption. However, this is a case where respondents exceeded the courts' jurisdictional

limits by bringing what amounts to an in rem action against the NORTHERN RETRIEVER. It may be possible to look at this as a question of preemption, in that maritime law, especially maritime lien law must be uniform, *Kickerbocker Ice, Co. v. Stewart*, 253 U.S. 149, 160-61, 30 S.Ct. 438, 64 L.Ed 834 (1920), and the actions of the respondents are contrary to that uniformity.

In this sense, preemption does not come from the respondents violating a federal statute, but from the respondents violating the long standing traditions of general maritime law, that predate the Constitution itself.

Respondents argue that maritime liens are removed for reasons other than in rem actions. For example the vessel may be lost. Those risks are built into maritime liens. Mr. Matheson's opening brief has a brief history of maritime liens. Pages 15-23. Through the years risk has been calculated, but to have every state seize vessel and destroy them without using a uniform process is a risk that has not been calculated.

Respondents argue that there is no doubt that the NORTHERN RETRIEVER was an abandoned or derelict vessel under the Derelict Vessels Act. While that may not have been that clear, the lower court found that the vessel was a derelict. However, that finding does not matter, because the respondents

destroyed the NORTHERN RETRIEVER and wiped off the maritime liens attached to it, without following an acceptable process like the one found in Supplemental Rules For Admiralty or Maritime Claims and Asset Forfeiture Actions in federal court. The vessel's destruction and wiping the maritime liens was beyond the court's jurisdictional limits and therefore, the court orders, CP pages 6-10, 11-18, 20-24, 224-26, 279-80, and 281-82, are void and unenforceable. See, *Harbor Enterprises, Inc. v. Gudjonsson*, 116 Wn.2d 283, 803 P.2d 798 (Wash. 1991) *reconsideration denied* 1991 Wash.LEXIS 323 (1991).

CONCLUSION

Mr. Matheson appeals the orders entered against the NORTHERN RETRIEVER and himself. CP pages 6-10, 11-18, 20-24, 224-26, 279-80, and 281-82.

RCW 79.100 et al creates a maritime lien that is beyond the subject matter jurisdiction of the superior court to enforce.

In the alternative, what RCW 79.100 et al. does is adversely affect the operation of general maritime law and creates havoc in the uniform federal maritime law. The maritime law must be uniform throughout the states for the good of national and international commerce.

The respondent's arguments that the NORTHERN RETRIEVER was a dead ship and that admiralty jurisdiction did not apply were without merit. The respondents' other arguments were likewise unfounded or inapplicable.

The solution was quite simple. All the City of Hoquiam had to do was go to federal court and use its admiralty notice and process to foreclose on the NORTHERN RETRIEVER, and the proper harmony and uniformity of the maritime law would have been protected.

Therefore, Mr. Matheson respectfully requests that the Orders found at CP 6-10, 11-18, 20-24, 224-26, 279-80, and 281-82, be reversed and this matter be remanded for additional proceedings.

DATED this ²¹ day of November 2011.



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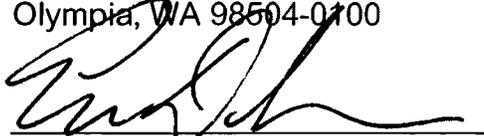
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CERTIFICATE OF DELIVERY

I, the undersigned, certify under the penalty of perjury in the State of Washington that on the 21 day of November 2011, I had a copy of this document mailed to the attorney of record for the appellee/defendant, first class postage pre-paid to:

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Eric Dickman
Signed at Seattle, Washington.
No Notary was readily available.

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